



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0722]

RIN 1625-AA00

Safety Zone; Sunset Point, San Juan Island, WA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 1000-yard radius of Sunset Point on San Juan Island, WA. This rule supplement a safety zone expiring on September 12, 2022. This safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with the emergency response efforts and the recovery of a sunken vessel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Puget Sound.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through September 26, 2022, at 10 p.m. For the purposes of enforcement, actual notice will be used from September 12, 2022, at 10 p.m., until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0722 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Samud I. Looney, Sector Puget Sound, Waterways Management Division, U.S. Coast Guard; telephone 206-217-6051, email SectorPugetSoundWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

This is the third temporary rule the Coast Guard has published related to this sunken vessel. On August 18, 2022, the Coast Guard issued a temporary final rule establishing a temporary safety zone in effect through August 29, 2022 (87 FR 51909). On August 26, 2022, the Coast Guard issued a temporary final rule extending the safety zone to be in effect through September 12, 2022 (87 FR 54154). Due to the nature of the ongoing operations, additional time is needed to maintain safe navigation around response equipment and responders while additional damage assessments and salvage operations occur, and, as a result, the Coast Guard is establishing through temporary regulations a safety zone that will be in effect through September 26, 2022. The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of

proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to respond to the safety hazards associated with the response measures in product recovery of a sunken vessel. It is impracticable to publish an NPRM and hold a reasonable comment period for this rulemaking due to the emergent nature of the ongoing response and recovery operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the safety hazards associated with the response and salvage operations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Puget Sound (COTP) has determined that potential hazards associated with the emergency response and recovery operations will be a safety concern for anyone within a 1000-yard radius of Sunset Point, San Juan Island, WA. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the emergency response is ongoing and during the recovery of the sunken vessel.

IV. Discussion of the Rule

This rule establishes a temporary safety zone that will be enforced from September 12, 2022, at 10 p.m., through September 26, 2022, at 10 p.m. The safety zone will cover all navigable waters within 1000-yard radius of Sunset Point, San Juan Island, WA. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the emergency response of the sunken vessel are ongoing. No vessel or person will be permitted to enter the safety zone

without obtaining permission from the COTP or a designated representative. The safety zone may be suspended early at the discretion of COTP Sector Puget Sound.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of Sunset Point on San Juan Island for a total of 14 days and operations may be suspended early at the discretion of the COTP Sector Puget Sound. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 14 days that will prohibit entry within 1000 yards of Sunset Point while vessels, equipment, and personnel are being used in the emergency response and removal of a sunken vessel. It is categorically excluded from further review under paragraph L60[d] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T13-0722 to read as follows:

§ 165.T13-0722 Safety Zone; Sunset Point, San Juan Island, WA.

(a) *Location.* The following area is a safety zones: all navigable waters within a 1000 yard radius of the sunken vessel located at 48° 33' 16.1" N, 123° 10' 28.9" W off of Sunset Point, San Juan Island, WA. These coordinates are based 1984 World Geodetic System (WGS 84).

(b) *Definitions.* As used in this section, a *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Sector Puget Sound in the enforcement of

the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from September 12, 2022, at 10 p.m. through September 26, 2022, at 10 p.m. unless an earlier end is announced by Broadcast Notice to Mariners on VHF-FM marine channel 16.

Dated: September 12, 2022.

P. M. Hilbert,
Captain, U.S. Coast Guard,
Captain of the Port Sector Puget Sound.

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